

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LIZZIE McCAIN,

No. CIV.S-05-0252 DFL DAD PS

Plaintiff,

v.

FINDINGS AND RECOMMENDATIONS

ONIKA E. McGRIFF,
et al.,

Defendants.

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Plaintiff Lizzie McCain is proceeding in this action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. The matter was referred to a United States Magistrate Judge by Local Rule 72-302(c)(21) pursuant to 28 U.S.C. § 636(b)(1).

By order filed October 20, 2005, plaintiff's complaint was dismissed and twenty days leave to amend was granted. Plaintiff has timely filed an amended complaint.

The somewhat difficult to decipher amended complaint indicates that plaintiff is attempting to pursue a housing discrimination action against an apartment complex, Deliverance

1 Temple Apartments, and its management. However, the amended
2 complaint alleges that the parties are located in Contra Costa
3 County, which is within the Northern District of California, and that
4 all of the events giving rise to this action occurred there. (See
5 Am. Compl. paras. 2, 4 & 5.) Therefore, "a substantial part of the
6 events or omissions giving rise to the claim occurred" in the
7 Northern District. See 28 U.S.C. § 1391(b)(2).

8 A district court may dismiss any civil action filed in the
9 wrong district, or if it be in the interest of justice, transfer the
10 case to the correct district. See 28 U.S.C. § 1406(a); Oaks of
11 Woodlake Phase III, Ltd. v. Hall, Bayoutree Assocs., Ltd. (In re
12 Hall, Bayoutree, Assocs., Ltd.), 939 F.2d 802, 805 (9th Cir. 1991).
13 The undersigned will recommend that this action be dismissed, as
14 opposed to transferred, for several reasons. First, while the
15 initial complaint listed Lizzie McCain as the sole plaintiff in this
16 action, the amended complaint purports to add numerous other
17 plaintiffs, including Lizzie McCain's husband, children and
18 grandchildren. However, none of these other plaintiffs have signed
19 the complaint and a pro se litigant such as Ms. McCain cannot
20 represent another pro se litigant. Further, to the extent that any
21 of the family members are minors, Ms. McCain has not taken the
22 necessary steps to be appointed guardian ad litem so that she may
23 proceed on their behalf.

24 Additionally, the amended complaint, while making several
25 general references to discrimination based on race, color, marital
26 status and family status, repeatedly alleges that defendants have

1 violated numerous provisions of the California Civil and Government
2 Codes with respect to housing. Breach of contract and intentional
3 infliction of emotion distress also are alleged. No violation of
4 federal law is alleged. Therefore, it appears that this action is
5 more properly pursued in state court.

6 Finally, the events alleged in the complaint occurred
7 during 2000 and 2001. Thus, to the extent plaintiff is attempting to
8 bring an action under the federal Fair Housing Act, this action,
9 which was initiated with the filing of the complaint on February 8,
10 2005, would appear to be untimely in light of the applicable two-year
11 statute of limitations. See 42 U.S.C. § 3613(a)(1)(A).

12 For all of these reasons, it would not be in the interest
13 of justice to transfer this action to the Northern District. Rather,
14 IT IS HEREBY RECOMMENDED that this action be dismissed without
15 prejudice.

16 These findings and recommendations are submitted to the
17 United States District Judge assigned to the case, pursuant to the
18 provisions of 28 U.S.C. § 636(b)(1). Within twenty (20) days after
19 being served with these findings and recommendations, plaintiff may
20 file written objections with the court. Such a document should be
21 captioned "Objections to Magistrate Judge's Findings and
22 Recommendations." Plaintiff is advised that failure to file
23 objections within the specified time may waive the right to appeal

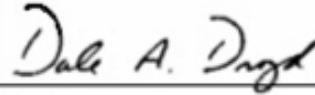
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1 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th
2 Cir. 1991).

3 DATED: November 7, 2005.

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6 DALE A. DUGAY
7 UNITED STATES MAGISTRATE JUDGE

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